



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2021-0867; FRL-9377-02-R4]

Air Plan Approval; North Carolina;

Prevention of Significant Deterioration for Mecklenburg County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a portion of a State Implementation Plan (SIP) revision to the Mecklenburg County portion of the North Carolina SIP, hereinafter referred to as the Mecklenburg County Local Implementation Plan (LIP). The revision was submitted through the North Carolina Division of Air Quality (NCDAQ), on behalf of Mecklenburg County Air Quality (MCAQ), via a letter dated April 24, 2020, which was received by EPA on June 19, 2020. This SIP revision includes changes to Mecklenburg County Air Pollution Control Ordinance (MCAPCO) rules incorporated into the LIP regarding Prevention of Significant Deterioration (PSD) permitting to address changes to the Federal new source review (NSR) regulations in recent years. EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2021-0867. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via electronic mail at akers.brad@epa.gov or via telephone at (404) 562-9089.

SUPPLEMENTARY INFORMATION:

I. Background and Overview of Mecklenburg LIP

The Mecklenburg LIP was submitted to EPA on June 14, 1990, and EPA approved the plan on May 2, 1991. *See* 56 FR 20140. EPA is now approving changes to the LIP for, among other things, general consistency with the North Carolina SIP.¹ Mecklenburg County prepared three submittals in order to update the LIP and reflect regulatory and administrative changes that NCDAQ made to the North Carolina SIP since EPA's 1991 LIP approval.² The three submittals were submitted as follows: NCDAQ transmitted the October 25, 2017, submittal to EPA but later withdrew it from review through a letter dated February 15, 2019. On April 24, 2020, NCDAQ resubmitted the October 25, 2017, update to EPA and submitted the January 21, 2016,

¹ Hereinafter, the terms "North Carolina SIP" and "SIP" refer to the North Carolina regulatory portion of the North Carolina SIP (i.e., the portion that contains SIP-approved North Carolina regulations).

² The Mecklenburg County, North Carolina revision that is dated April 24, 2020, and received by EPA on June 19, 2020, is comprised of three previous submittals – one dated January 21, 2016; one dated October 25, 2017; and one dated January 14, 2019.

and January 14, 2019, updates. Each of these submittals were properly noticed to the public in compliance with 40 CFR 51.102.

This final rule modifies the LIP by updating the PSD program rules incorporated into the LIP in Rule 2.0530, *Prevention of Significant Deterioration*, and by adding into the LIP Rule 2.0544, *Prevention of Significant Deterioration Requirements for Greenhouse Gases*.

II. Updates to the Mecklenburg PSD Program

MCAQ adopts the Federal PSD provisions of 40 CFR 51.166 with several changes, consistent with the State of North Carolina's PSD rules.³ MCAPCO Rule 2.0530 adopts certain provisions of the version of 40 CFR 51.166 effective on July 1, 2014, with certain revisions described in this document, and Rule 2.0544 adopts certain provisions of the version of the Federal rule effective on July 20, 2011, with certain revisions described in this document.

MCAQ's April 24, 2020, LIP revision addresses changes EPA made to the PSD program via "NSR reform" through the December 31, 2002, final rule (67 FR 80186), with revisions per the November 7, 2003, final rule (68 FR 63021), the June 13, 2007, final rule (72 FR 32526), and the December 21, 2007, final rule (72 FR 72607).^{4,5} The LIP revision also includes provisions for implementation of the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) as promulgated in the November 29, 2005, final rule (70 FR 71612).

³ See, e.g., 76 FR 49313 (August 10, 2011); 76 FR 64240 (October 18, 2011); 81 FR 63107 (September 14, 2016); 83 FR 45827 (September 11, 2018); 84 FR 38876 (August 8, 2019); and 85 FR 57707 (September 16, 2020).

⁴ As noted in the August 24, 2022, notice of proposed rulemaking (NPRM) (87 FR 51946), this action does not include approval into the LIP of the October 27, 2003, final rule revisions referred to as the "Equipment Replacement Provision Rule" (68 FR 61248) to 40 CFR 51.166(b)(2)(iii)(a), the incorporation by reference of 40 CFR 51.166(b)(53) through (56), nor the incorporation by reference of 40 CFR 51.166(y). These provisions were in the Federal rule as of July 1, 2014, but were previously vacated by the D.C. Circuit. *New York v. EPA*, 443 F.3d 880 (D.C. Cir. 2006). On September 27, 2022, MCAQ provided further clarification to EPA that these provisions are not part of the Mecklenburg PSD program, are not implemented locally, and are not requested for approval into the Mecklenburg LIP. This letter is included in the docket for this rulemaking.

⁵ As noted in the August 24, 2022, NPRM, this action does not include approval into the LIP of the December 19, 2008, final rule revisions referred to as the "Fugitive Emissions Rule" (73 FR 77882) to 40 CFR 51.166(b)(2)(v) and (b)(3)(iii)(d). These provisions remain in the Federal rule as of July 1, 2014, and to present day; however, these provisions are indefinitely stayed by EPA and therefore not effective. See 76 FR 17553 (March 30, 2011). On September 27, 2022, MCAQ provided further clarification to EPA that these provisions are not part of the Mecklenburg PSD program, are not implemented locally, and are not requested for approval into the Mecklenburg LIP. This letter is included in the docket for this rulemaking.

The April 24, 2020, LIP revision also includes the regulation of fine particulate matter (particulate matter with an aerodynamic diameter of 2.5 microns or less, “PM_{2.5}”) and its precursors through the May 16, 2008, final rule (73 FR 28321), with revisions per the October 20, 2010, final rule (75 FR 64863), the May 18, 2011, final rule (76 FR 28646), the October 25, 2012, final rule (77 FR 65107), and the December 9, 2013, final rule (78 FR 73698).

Next, this revision also conforms the MCAPCO rules to changes to EPA regulations reflected in EPA’s 2007 Ethanol Rule. *See* 72 FR 24060 (May 1, 2007). EPA included technical analysis in separate technical support documents (TSD) included in the docket for this rulemaking specific to the incorporation of the 2007 Ethanol Rule. *See* the TSD and the August 24, 2022, NPRM for further detail on the LIP revision related to incorporation of the 2007 Ethanol Rule provisions and EPA’s rationale for approval. Finally, the April 24, 2020, LIP revision includes the provisions necessary to implement PSD for greenhouse gases through the June 3, 2010, final rule (75 FR 31514).^{6,7} *See* the August 24, 2022, NPRM for additional details and rationale for EPA’s action. EPA received one comment that is not relevant to this action. The comment is available in the docket for this action.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Sections I and II of this preamble, EPA is finalizing the incorporation by reference the following Mecklenburg County Rules: 2.0530, *Prevention of Significant Deterioration*, effective on October 17, 2017;⁸ and 2.0544, *Prevention of Significant Deterioration Requirements for Greenhouse Gases*,

⁶ The July 20, 2011, incorporation by reference date at Rule 2.0544(o) does not include the regulation of “GHG-only” sources in accordance with the June 3, 2010, final rule, however, because language within Rule 2.0544(a) states that only sources already subject to PSD for another “regulated NSR pollutant” are regulated for the purposes of GHGs. This is consistent with current Federal regulations per the August 19, 2015, final rule (80 FR 50199).

⁷ MCAQ submitted a letter on February 4, 2022, through NCDAQ, clarifying its intent for EPA not to adopt the since-vacated text of the July 20, 2011, Biomass Deferral Rule (76 FR 43490) previously codified at 40 CFR 51.166(b)(48)(ii)(a). Specifically, the February 4, 2022, letter withdraws this portion of the adoption of PSD provisions from the April 24, 2020, submittal.

⁸ This action does incorporate by reference into the LIP the Equipment Replacement Rule and Fugitive Emissions Rule contained in 40 CFR 51.166(b)(2)(iii)(a), (b)(2)(v), (b)(3)(iii)(d), (b)(53) through (56), and (y) as those CFR provisions existed on July 1, 2014. *See* footnotes 4 and 5 for more details.

effective on December 15, 2015.⁹ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹⁰

IV. Final Action

EPA is approving the aforementioned changes to the Mecklenburg County LIP. Specifically, EPA is incorporating updates to PSD permitting provisions in Rule 2.0530, *Prevention of Significant Deterioration*, with the exception of those provisions described in footnote 8, and is incorporating new Rule 2.0544, *Prevention of Significant Deterioration Requirements for Greenhouse Gases*, with the exception of those provisions described in footnote 9. With these changes and additions, the local regulations will now be consistent with the State's current SIP-approved PSD program and Federal PSD rules. Therefore, EPA is approving the April 24, 2020, LIP revision changes to Mecklenburg County's PSD permitting program, pursuant to the Act and EPA's implementing regulations.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as

⁹ This action does incorporate by reference into the LIP the Biomass Deferral Rule contained in the second sentence 40 CFR 51.166(b)(48)(ii)(a) as that CFR provision existed on July 20, 2011. *See* footnotes 6 and 7 for more details.

¹⁰ *See* 62 FR 27968 (May 22, 1997).

meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of

Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from date of publication in the FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 30, 2022.

Daniel Blackman,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II – North Carolina

2. In § 52.1770, amend the table in paragraph (c)(3) by:

a. Removing the entry for “Section 2.0530” and adding in its place an entry for “Rule 2.0530;”

and

b. Adding an entry for “Rule 2.0544” in numerical order.

The additions read as follows:

§52.1770 Identification of plan.

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(c) * * *

(3) EPA Approved Mecklenburg County Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Section 2.0500 Emission Control Standards				
Rule 2.0530	Prevention of Significant Deterioration	10/17/2017	[Insert date of publication in Federal Register], [Insert citation of publication]	Except for the incorporation by reference of 40 CFR 51.166(b)(2)(iii)(a), which is instead incorporated by reference as of July 1, 1988. Except for the incorporation by reference of 40 CFR 51.166(b)(2)(v), (b)(3)(iii)(d), (b)(53) through (56), and (y).
**	**	*	*	*

Rule 2.0544	Prevention of Significant Deterioration Requirements for Greenhouse Gases	12/15/2015	[Insert date of publication in Federal Register], [Insert citation of publication]	Except for the Biomass Deferral Rule language contained in the second sentence of 40 CFR 51.166(b)(48)(ii) (a).
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[FR Doc. 2022-21646 Filed: 10/5/2022 8:45 am; Publication Date: 10/6/2022]